

STATE OF CALIFORNIA



MEMO

To : ALL BOARD MEMBERS

Date: May 9, 2012

From : WILLIAM BRENNAN
ROBIN PARKER

Subject: DISCUSSION AND CONSIDERATION OF REQUEST FOR CONSENT TO FILE
AN AMICUS CURIAE BRIEF IN SUPPORT OF YAMAHA MOTOR CORP.,
U.S.A.'S ARGUMENTS REGARDING THE JURISDICTION OF THE BOARD,
BEFORE THE SECOND DISTRICT COURT OF APPEAL IN VENTURA

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR
CORPORATION, U.S.A.

Protest No. PR-2122-08; SLO County Superior Court No. CV098090; and Court of
Appeal No. B236705

On May 9, 2012, the Board received the attached request to file an amicus curiae brief in the above-referenced Court of Appeal case on behalf of Yamaha Motor Corporation, U.S.A. The request was filed by Maurice Sanchez, Esq. of Baker & Hostetler LLP.

As you may recall, the Board filed an amicus letter last year with the California Supreme Court in the *Powerhouse* case. The letter was filed prior to the jury trial in which Robin testified by providing statistical information on case management, explained the difference between a protest and a petition, and answered questions. Yamaha now requests that the Board submit an amicus curiae brief that would be the same as the letter submitted to the Supreme Court. According to counsel, "...the brief would explain the difference in the Board's jurisdiction between protests and petitions and would set forth the difficulties that would occur if the Board were held to lack jurisdiction over protests. The brief also would request the appellate court to recognize that rulings of the Board, in making its jurisdictional determination on a termination protest, are entitled to deference in the courts of this state." Lastly, counsel indicates that Yamaha does not request the Board take a position with regard to the ultimate outcome of the case; the proposed brief is meant to educate the court.

As indicated in the Executive Director's Report, no briefs have been filed yet. The court vacated the filing date due to the late filing of the supplemental record. Amicus briefs are due 14 days following the filing of the last brief, or the date upon which the last brief could have been filed, whichever is earlier. Assuming that the parties utilize the full periods for briefs and that no extensions are taken, the approximate date for the Board's amicus brief would be October 10, 2012.

This matter is being agendized for discussion and consideration in accordance with the July 1996 Performance Audit conducted by Business, Transportation & Housing Agency. The policy adopted as a result of the Audit is as follows:

The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency ("Agency"). As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board determines that it does not want to file the amicus brief, the request for consent will be withdrawn.

Therefore, this matter is being agendized for Board consideration. As indicated above, in the event the Board decides to go forward with the amicus curiae brief, Agency as well as the Governor's Office needs to approve this request. This is merely the first step in seeking that permission.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

Attachment: as stated